

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

ROBEN B. HALL

Petitioner.

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CHARGE NO.: 2009CF1982
EEOC NO.: 21BA90770
ALS NO.: 10-0244

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Roben B. Hall's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CF1982; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **WHEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF JURISDICTION

In support of which determination the Commission states the following:

1. On November 17, 2008, the Petitioner filed an unperfected charge of discrimination with the Respondent, perfected on January 9, 2009. The Petitioner alleged that Wal-Mart Stores, Inc. ("Employer") failed to promote her because of her physical disabilities, Traumatic Head Injury and Reflex Sympothetic Dystrophy (Counts A and B), and her sexual orientation, homosexual (Count C), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On March 5, 2010, the Respondent dismissed the Petitioner's charge for lack of jurisdiction. On April 5, 2010, the Petitioner timely filed this Request.
2. The Employer's employees may apply for open positions within the Employer by using an on-line computerized Career Preference System ("System"). The System is accessible to all of the Employer's employees. When a job position becomes available, it is entered in the System as "open." When the position is filled it is entered into the System as "closed."
3. On February 10, 2008, the Employer entered into the System an opening for the position of Management Trainee at the Employer's store in Rockford, Illinois.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. According to the Petitioner's Career Preferences Printout, generated by the System, on February 10, 2008, the Petitioner indicated her interest in the Management Trainee position.
5. On April 29, 2008, the Employer selected a different applicant for the Management Trainee position.
6. On May 6, 2008, the Employer updated the System to reflect that the Management Trainee position was closed, thereby giving notice to all employees that the position was no longer available.
7. In her charge, filed on November 17, 2008, the Petitioner alleged that on or about May 20, 2008, she was denied a promotional opportunity to the position of Management Trainee.
8. During a fact-finding conference held by the Respondent following the filing of the charge, the Petitioner admitted that she was not sure that May 20, 2008, was the date she learned the position of Management Trainee was no longer available. The Petitioner conceded that she may have learned of this fact on May 6, 2008.
9. The Respondent determined that the date of the alleged civil rights violation was May 6, 2008, the date the Employer updated the System to reflect the Management Trainee position was no longer available.
10. The Respondent further determined that the Petitioner's charge was untimely because it was filed more than 180 days after the date of the alleged civil rights violation, or specifically 194 days after May 6, 2008. Therefore, the Respondent dismissed the Petitioner's charge pursuant to Section 7A-102(A)(1) of the Act for lack of jurisdiction. See 775 ILCS 5/7A-102(A)(1).
11. In her Request, the Petitioner argues that she did not become aware of the alleged civil rights violation until May 20, 2008. Therefore, the Petitioner argues her charge was timely filed within 180 days from the date she became aware of the alleged civil rights violation.
12. In its Response, the Respondent asks the Commission sustain the dismissal of the Petitioner's charge for lack of jurisdiction. The Respondent contends that as of May 6, 2008, the Petitioner knew or should have known that she had not been selected for the position of Management Trainee. Therefore, the 180 clock began to run as of May 6th, and the Petitioner untimely filed her charge 194 days after she knew or should have known of the alleged civil rights violation.

CONCLUSION

The Commission sustains the dismissal of the Petitioner's charge for lack of jurisdiction.

Section 7A-102(A)(1) of the Act provides that in all cases (except housing discrimination cases), a complainant must file a charge of discrimination with the Respondent within 180 days after the date of the alleged civil rights violation. This 180-day filing requirement is jurisdictional. Failure to file a charge within the prescribed time deprives the Respondent and the Commission of jurisdiction to proceed further. See Trembczynski v. Human Rights Commission, 252 Ill.App.3d 966, 625 N.E.2d, 215, 218 (1st Dist 1993).

Further, the Commission has previously held that "the 180 day period begins to run from the time that the adverse action is communicated to the Complainant." See Fletcher Barnes and Chicago Transit Authority, 36 Ill. HRC Rep. 211, 2 (1987). In other words ... "the 180-day period begins when the employer gives notice of the discriminatory action, which is when the injury is deemed to have occurred." See Jesse Lofton and Brown & Williamson Tobacco Corp., IHRC, ALS No. 4306, June 29, 1992, 1992 WL 721759, * 5. Communication of the alleged discriminatory action does not have to be formal. "If events transpire which in fairness and logic would alert an average layperson that discrimination is occurring, the Petitioner must file a charge with respect to that discrimination during the limitations period." See Elliott v. Sperry-Rand Corp., 79 F.R.D. 580 (D. Mn. 1978), Cited at Barnes at *3.

In the Petitioner's case, the Employer made its decision on April 29, 2008. Thereafter, on May 6, 2008, the Employer updated its System to reflect that the position of Management Trainee was closed. When the Employer updated its System on May 6, 2008, it gave notice to anyone interested in the position that the Employer had selected a candidate. Furthermore, the Petitioner concedes that she may in fact have become aware of the Employer's decision on May 6th, and not May 20th.

Based on the applicable law, the Commission concludes that the Respondent did not err when it determined that May 6, 2008, was the date the Employer had given notice to the Petitioner of the alleged civil rights violation. Thus May 6, 2008, is the operative date which started the 180-day filing period for the Petitioner. The Respondent correctly determined that the Petitioner filed her charge 194 days after May 6, 2008. Therefore, the Respondent correctly determined it lacked jurisdiction over the Petitioner's charge pursuant to Section 7A-102(A)(1) of the Act because the Petitioner failed to file her charge within 180 days after the Employer had given her notice of the alleged civil rights violation.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Wal-Mart Stores, Inc., as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 12th day of January 2011.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box